

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of the Satellite Home)
Viewer Improvement Act of 1999)

Broadcast Signal Carriage Issues)

CS Docket No. 00-96

To: The Commission

COMMENTS OF TELEMUNDO GROUP, INC.

Telemundo Group, Inc. ("Telemundo"), by its attorneys, hereby submits these Comments on the Emergency Petition filed in the above-captioned proceeding.¹ The Emergency Petition urges the Commission to clarify or modify its rules to ensure that direct broadcast satellite operators carry television stations signals in a manner consistent with the letter and spirit of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). Telemundo strongly endorses the relief requested in the Emergency Petition, because EchoStar Satellite Corporation ("EchoStar") currently is carrying eight of Telemundo's stations in a manner that is clearly discriminatory, harmful to the public interest, and illegal.

Telemundo's eleven full-power television stations provide both Telemundo Network programming and local programming (including Spanish-language news and public affairs) to television viewers in ten markets throughout the country, including the eight largest U.S. Hispanic television markets and Puerto Rico.

¹ See Public Notice, DA 02-31 (rel. Jan. 8, 2002). Telemundo is the owner, through subsidiaries, of eleven full-power Spanish-language television stations,

I. EchoStar Is Discriminating Against Spanish-Language Television Stations.

In light of the rising importance of direct broadcast satellite distribution, Telemundo properly and timely notified DirecTV and EchoStar that it elected must-carry for all of its stations. DirecTV generally has honored those rights by launching Telemundo's stations consistent with its carriage obligations. In contrast, EchoStar raised repeated, meritless objections to Telemundo's carriage rights. Only after Telemundo incurred considerable expenditures of time, money, and effort did EchoStar withdraw its objections and agree to carry Telemundo's stations (except for WKAQ-TV, San Juan, Puerto Rico, which operates in a market not served by EchoStar).

Nevertheless, EchoStar has chosen to implement a carriage plan that discriminates against certain television stations – most notably Spanish-language television stations including those licensed to Telemundo. Specifically, EchoStar's customers in Telemundo's markets cannot receive the local Telemundo station with their existing EchoStar equipment.² Rather, EchoStar forces its customers to undergo the expense of securing and installing additional antenna, receiver, and related wiring to receive the Telemundo station through their satellite system.³

In contrast, EchoStar's customers need not sacrifice any time, effort, or money to receive the rest of EchoStar's programming options – which consist mainly of English-language channels and broadcast stations. In particular, existing equipment can be used to receive the following channels:

- *All* cable programming networks offered by EchoStar (*e.g.*, CNN, ESPN, Nickelodeon);
- *All a la carte* cable programming networks offered by EchoStar (*e.g.*, HBO, Showtime, Cinemax);

² There are two exceptions. WNJU(TV), which suffered the loss of its transmitter on September 11, 2001, is awaiting the installation of a fiber feed to EchoStar's local receive facility in New York City and therefore is not carried by EchoStar at this time. WSCV(TV), the highest rated television station in the Miami-Ft. Lauderdale DMA, is carried by EchoStar on a CONUS satellite.

³ EchoStar apparently will not provide more than one free, standard receiver/set-top box to customers. Thus, those who have more than one television equipped with EchoStar's service and those who have upgraded set-top boxes will be forced to purchase new receivers to receive "disfavored" stations under EchoStar's plan.

- *All* pay-per-view channels offered by EchoStar;
- *All* local affiliates of the six English-language networks (*e.g.*, ABC, CBS, NBC); and
- Certain local independent stations in some markets (*e.g.*, KDFI in Dallas, KCAL in Los Angeles).

Requiring subscribers to install additional equipment to receive Spanish-language stations but not local English-language stations is rank discrimination against alternative media – and this country’s growing Hispanic population. Such discrimination has no place in America, and it certainly has no place in a carriage scheme carried out by a Commission licensee.

II. Discrimination Against Spanish Language Stations Harms the Public Interest.

EchoStar’s conduct virtually ensures that the disfavored stations will lose viewership, which is precisely the harm that Congress sought to avoid by granting television stations cable and satellite must-carry rights. The loss of viewership undoubtedly will result because few EchoStar subscribers will undergo the expense in time, effort, and money necessary to be able to receive local Spanish-language television stations. Few subscribers will know that the Spanish-language television stations are available because their on-screen programming guide do not include those stations. Moreover, few subscribers will be willing to have a second satellite dish and additional cabling installed for aesthetics reasons, especially since they already can receive without any hassle hundreds of other channels, including all of the English-language affiliates and hundreds of pay-per-view options. Finally, few subscribers will be willing or even able to obtain the clearances necessary to have an additional satellite dish installed at their apartment or condominium building.

Indeed, the risk posed to the discriminated against stations is nothing new. Congress and the courts repeatedly have recognized that subscribers will not install additional equipment to receive broadcast stations when they already have a subscription to a multichannel video programming distributor that provides the bulk of cable and programming channels. In enacting the 1992 Cable Act, Congress specifically rejected the cable industry’s suggestion that consumers’ installation of a broadcast antenna provided a sufficient remedy to the threat posed by “cherry picking” which stations would be

carried by cable.⁴ The U.S. Supreme Court upheld Congress's determination as reasonable; in fact, it cited the cable industry's own findings as to impracticality of solutions based on additional equipment.⁵

Congress revisited this issue in the context of satellite delivery of broadcast signals. In 1999, satellite subscribers could only receive broadcast station signals by installing a broadcast antenna.⁶ EchoStar Senior Vice President and General Counsel David Moskowitz told Congress that that situation placed DBS operators at a competitive disadvantage to cable, which allowed subscribers to receive all signals from a single source: "most people who walk into a satellite dealer's showroom turn around and walk out because they can't get their local TV channels through DBS."⁷ Congress agreed with Mr. Moskowitz that DBS operators should be able to provide their subscribers with all local stations from a single source.

At the same time, Congress worried that DBS operators would discriminate among local stations by choosing to carry some stations and leaving the others behind:

Although the conferees expect that subscribers who receive no broadcast signals at all from their satellite service may install antennas or subscribe to cable service in addition to satellite service, the Conference Committee is less sanguine that subscribers who receive network signals and hundreds of other programming choices from their satellite carrier will undertake such trouble and expense to obtain over-the-air signals from independent broadcast stations.⁸

⁴ *Turner Broad. Sys., Inc. v. FCC*, 117 S. Ct. 1174, 1201 (1997)

⁵ *Id.* ("Congress' decision that use of A/B switches was not a real alternative to must-carry was a reasonable one based on substantial evidence of technical shortcomings and lack of consumer acceptance.").

⁶ See *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming*, 13 FCC Rcd 1034, n. 202 (1998) (noting EchoStar's development of a receiver that integrates satellite signals with broadcast signals received through an off-air antenna).

⁷ *Reauthorization of the Satellite Home Viewers Act: Hearing Before the Subcommittee on Telecommunications, Trade, and Consumer Protection of the House Committee on Commerce*, 106th Cong. 73 (1999).

⁸ *Joint Explanatory Statement of the Committee of Conference on H.R. 1554*, 106th Cong. 145 Cong. Rec. H11769-01, H11795 (daily ed. Nov. 9, 1999).

In short, Congress concluded that, without strict must-carry requirements, “satellite operators would carry the major network affiliates and few other signals. Non-carried stations would face the same loss of viewership Congress previously found with respect to cable noncarriage.”⁹ Because Congress felt that relying on consumers to install additional equipment was not a feasible solution to satellite operators’ discrimination among broadcast stations, it concluded that a “carry one, carry all” rule would best protect the ability of all local broadcasters to reach their audiences, thereby “preserv[ing] free television for those not served by satellite or cable systems and . . . promote widespread dissemination of information from a multiplicity of sources.”¹⁰ Just last month, the U.S. Court of Appeals for the Fourth Circuit unanimously upheld these Congressional determinations in concluding that the satellite must-carry requirements are constitutional.¹¹

EchoStar’s decision to relegate Spanish-language television stations to its “wingbirds” creates the very problem that Congress sought to remedy by imposing carriage obligations on EchoStar. Its local-into-local customers today receive the cherry-picked broadcast stations as well as hundreds of other programming channels from a single source, without any additional expenditure of time, money, effort, or other sacrifice. Nevertheless, to receive the noncarried stations, the subscribers need to install additional equipment – either a broadcast antenna or a second satellite antenna. As noted, Congress already found that this “solution” is neither feasible nor practical, and the courts have upheld this determination as reasonable.

EchoStar has claimed that its discrimination against stations not carried on the CONUS satellites is excused by the fact that two contractors have delayed their deliveries of new satellites to EchoStar. But these delays provide no basis for excusing EchoStar’s conduct. When satellite delays combined

⁹ *Id.*

¹⁰ *Id.*

¹¹ *See SBCA v. FCC*, Nos. 01-1151, 01-1271, 01-1272 and 01-1818, 2001 WL 1557809 (Dec. 7, 2001).

with EchoStar's over-commitment of satellite spectrum prevented it from fulfilling its statutory carriage obligations, EchoStar could have and should have remedied the problem by shifting to its "wingbirds" programming channels that do not have any statutory carriage rights, such as its pay-per-view channels. Instead, EchoStar has chosen an option that is simply not available to it under SHVIA by placing Spanish-language and other must-carry stations on its "wingbirds." This decision blatantly discriminates against Spanish-language stations and produces harms for which EchoStar has never offered to remedy. (We note that the delays in the delivery of the new satellites will result in millions of dollars in savings for EchoStar under its contracts with the satellite contractors.) EchoStar's conduct mocks the clear intent of Congress, which expressly enacted a scheme designed to prevent its grant of royalty-free local-into-local licenses from benefiting some broadcasters over others. After all, Congress designed SHVIA "in order to erase inequities, not further them."¹²

¹² 145 Cong. Rec. H11792, 11818 (daily ed. Nov. 9, 1999) (statement of Rep. Jackson-Lee).

Conclusion

EchoStar is a Commission licensee charged at all times with acting in the public interest. But EchoStar's conduct here is not in the public interest, because it ensures that the noncarried stations face the same loss of viewership that they would endure had Congress not enacted must-carriage requirements. In short, its decision to discriminate against Spanish-language television stations is inconsistent with its public interest obligations, as well as the obvious and expressed Congressional intent in enacting SHVIA. For these reasons, Telemundo respectfully requests that the Commission immediately confirm that EchoStar's practice of requiring additional equipment to receive a subset of local television stations violates the mandatory carriage obligations set forth in SHVIA and the Commission's rules.

Respectfully submitted,

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